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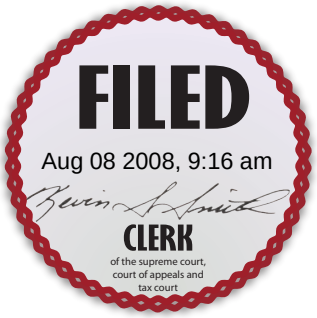

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IN THE
COURT OF APPEALS OF INDIANA

JOSE ANTONIO PEREZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-0804-CR-203
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0604-FA-26

August 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Jose Antonio Perez ("Perez") appeals his convictions for two counts of Dealing Methamphetamine, as Class A felonies.[1] We affirm.

Issue

Perez presents a single issue for review: whether the admission of evidence of a drug transaction substantially similar to those charged, in order to rebut an entrapment defense, denied him a fair trial.

Facts and Procedural History

On April 3, 2006, the State charged Perez with two counts of Dealing Methamphetamine and one count of dealing in a Schedule II controlled substance.[2] The State alleged that Perez sold amphetamine to a confidential informant working with the Elkhart Police Department on March 23, 2006, and also sold methamphetamine to the same confidential informant on March 27, 2006, and again on March 28, 2006.

On February 15, 2007, Perez notified the State of his intent to pursue an entrapment defense. Prior to trial, the charge based upon the March 23, 2006 transaction was dismissed.

Perez was brought to trial on March 5, 2007. When Perez pursued an entrapment defense, the State presented evidence of the March 23, 2006 transaction. Perez was convicted as charged and sentenced to concurrent sentences of forty years each. He now appeals.

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[1] Ind. Code § 35-48-4-1.

[2] Ind. Code § 35-48-4-2.

Discussion and Decision

Perez raised an entrapment defense pursuant to Indiana Code Section 35-41-3-9,[3] and the State then presented evidence of the March 23, 2006 transaction as tending to show Perez's predisposition to deal drugs.[4] Perez claims that the State should not have been allowed to present evidence of a prior drug transaction "using the same police undercover agents to show predisposition of the Appellant to deal drugs." Appellant's Brief at 4.

At trial, counsel for Perez acknowledged that the defense of entrapment had been raised in cross-examination of the State's witnesses, and further agreed with the State's position that evidence of the March 23, 2006 transaction would be admissible in rebuttal. Because he did not object at trial, Perez now couches his argument in terms of "fundamental error." The fundamental error exception is extremely narrow. Boesch v. State, 778 N.E.2d 1276, 1279 (Ind. 2002). Fundamental error is error that is "so prejudicial to the rights of the defendant as to make a fair trial impossible." Willey v. State, 712 N.E.2d 434, 444-45 (Ind. 1999).

Perez cites no authority for the proposition that the State is prohibited from

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[3] Indiana Code Section 35-41-3-9 provides:

It is a defense that:

(1) the prohibited conduct of the person was the product of a law enforcement officer, or his agent, using persuasion or other means likely to cause the person to engage in the conduct; and

(2) the person was not predisposed to commit the offense.

Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

[4] Once the defendant has indicated his or her intent to rely on the affirmative defense of entrapment and has established government participation, the burden then shifts to the State to show, beyond a reasonable doubt, the defendant's predisposition to commit the charged crime. Ferge v. State, 764 N.E.2d 268, 271 (Ind. Ct. App. 2002).

introducing evidence of a prior drug transaction if it involves the same police detective and confidential informant as those involved in the charged offenses. Moreover, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. Indiana Evidence Rule 103(a); Coleman v. State, 694 N.E.2d 269, 277 (Ind. 1998). In determining whether an evidentiary ruling affected a party's substantial rights, the court assesses the probable impact of the evidence on the trier of fact. Id. Whether a defendant is predisposed to commit the crime charged is a question for the trier of fact. Dockery v. State, 644 N.E.2d 573, 577 (Ind. 1994).

The record herein reveals that the State did not rely solely upon the March 23, 2006 transaction to establish Perez's predisposition to deal drugs. The State also introduced evidence that Perez was familiar with drug terminology, quantities, and prices. Perez traveled to the residence of the confidential informant for the final transaction. Moreover, the evidence showed that Perez was able to quickly procure methamphetamine in large quantities. On March 27, 2007, Perez agreed to sell the confidential informant one pound of methamphetamine. In exchange for $3,250, Perez provided a package tested and found to contain 223.8 grams, or 7.89 ounces, of methamphetamine. Perez asked, "Do you want another one?" (Tr. 92.) On March 28, 2006, Perez sold one pound of methamphetamine for $6,500 and agreed to "front" a second pound.[5] The package sold to the confidential informant was tested and found to contain 869.1 grams, or 30.65 ounces, of methamphetamine.

[5] Perez and the confidential informant agreed that Perez would be paid for the last pound of methamphetamine after the confidential informant sold it.

A jury may properly find predisposition from such circumstances as familiarity with drug jargon and prices, engaging in multiple transactions, and undertaking to arrange future transactions. Riley v. State, 711 N.E.2d 489, 494 (Ind. 1999). Perez did not demonstrate that the admission of evidence of the March 23, 2006 transaction denied him a fair trial.

Affirmed.

RILEY, J., and BRADFORD, J., concur.